

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-4590-00

JSRubinstein

date:

to: Area Manager/Director, Manhattan
Attention: Laura Hargrove, Employment Tax Specialist, Territory 4-4

from: District Counsel, Manhattan

subject: Taxpayer: [REDACTED]
EIN: [REDACTED]
Taxable Year: [REDACTED] (Forms 940 and 941)

Statute of Limitations Expires [REDACTED]

UIL No. 6501.08-02, 6501.08-17

DISCLOSURE STATEMENT

THIS DOCUMENT INCLUDES CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE INTERNAL REVENUE SERVICE, AND ITS USE WITHIN THE INTERNAL REVENUE SERVICE SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE SUBJECT MATTER OF THE CASE DISCUSSED HEREIN. ONLY OFFICE PERSONNEL WORKING THE SPECIFIC CASE OR SUBJECT MATTER MAY USE THIS DOCUMENT. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYER WHICH IS SUBJECT TO I.R.C. § 6103. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO THE TAXPAYER OR ITS REPRESENTATIVE(S) UNDER ANY CIRCUMSTANCES.

This memorandum responds to your request for written advice concerning the appropriate language for a Form SS-10, Consent to Extend the Time to Assess Employment Taxes, in connection with the federal employment tax returns of [REDACTED] for its [REDACTED] year.

The advice given below is subject to post review by the Chief Counsel's National Office. Therefore, we ask that you wait ten working days from the date of this memorandum, or until you hear of approval, before acting on this advice.

Facts

[REDACTED] (E.I.N. [REDACTED]) is a subsidiary of [REDACTED]. The Manhattan office is presently conducting an examination of [REDACTED] and [REDACTED]'s employment tax liability for the taxable year ending December 31, [REDACTED].

The quarterly employment tax returns for [REDACTED] for the [REDACTED] tax year were electronically filed by [REDACTED] ([REDACTED]). The following information, regarding the [REDACTED] payroll information, was included in a Statement of Deposits and Filings (which was submitted via magnetic tape to the Social Security Administration):

Name : [REDACTED]

Address: [REDACTED]

Legal Name: [REDACTED]

EIN: [REDACTED]

The above was provided to [REDACTED] by [REDACTED]. The name and address used was that of [REDACTED] certified public accountant. The legal name was that of the taxpayer's U.S. parent (the ultimate parent is a foreign corporation). The EIN was the proper employee identification number of [REDACTED]. [REDACTED] has verified that the amounts reported reflects their payroll tax liability.

You have requested advice concerning the appropriate language for a Form SS-10, Consent to Extend the Time to Assess Employment Taxes, in connection with the [REDACTED] federal employment tax returns of [REDACTED].

DISCUSSION

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2).

The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form SS-10. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement.

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For employment taxes, the form used by the Service to extend the limitations period on assessment is Form SS-10 (Consent to Extend the Time to Assess Employment Taxes).

The caption of the Form SS-10 extending the statute of limitations for [REDACTED] should read as follows:

" [REDACTED] (E.I.N. [REDACTED]) *"

In addition, at the bottom of the page, the following language should be added:

* This is with respect to Forms 941/940 erroneously filed under the legal name [REDACTED], but with [REDACTED]

██████████'s correct EIN.

The Form SS-10 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer authorized to act on behalf of ██████████. See Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev.Rul. 84-165, 1984-2 C.B. 305.

Should you have any questions regarding this matter, please contact Jody Rubinstein at (212)264-1595, extension 235.

LINDA R. DETTERY
District Counsel

By: _____
PETER J. LABELLE
Assistant District Counsel

Noted: _____
LINDA R. DETTERY
District Counsel

cc:

Theodore R. Leighton (by e-mail)
Assistant District Counsel

Peter J. Graziano (by e-mail)
Associate Area Counsel